

1 Introduced by Committee on Judiciary

2 Date:

3 Subject: Judiciary; court organization and operations

4 Statement of purpose of bill as introduced: This bill proposes a number of
5 measures related to the organization and operation of courts and the Judiciary.

6 An act relating to judicial organization and operations

7 It is hereby enacted by the General Assembly of the State of Vermont:

8

9 * * * Petition and affidavit in delinquency proceedings * * *

10 Sec. 1. 33 V.S.A. § 5223 is amended to read:

11 § 5223. FILING OF PETITION

12 (a) When notice to the child is provided by citation, the State's Attorney
13 shall file the petition and supporting affidavit at least 10 days prior to the date
14 for the preliminary hearing specified in the citation.

15 (b) ~~The Court shall send or deliver a~~ A copy of the petition and affidavit
16 shall be made available at the State's Attorney's office to all persons required
17 to receive notice, including the noncustodial parent, as soon as possible after
18 the petition is filed and at least five days prior to the date set for the
19 preliminary hearing.

20

1 Sec. 5. 12 V.S.A. § 2553 is amended to read:

2 § 2553. ~~APPEALS TO CIVIL DIVISION; APPELLATE JURISDICTION~~

3 ~~The Civil Division of the Superior Court shall have appellate jurisdiction of~~
4 ~~matters originally within the jurisdiction of the Probate Division of the~~
5 ~~Superior Court, except as herein otherwise provided. [Repealed.]~~

6 Sec. 6. 12 V.S.A. § 2555 is amended to read:

7 § 2555. ~~APPEAL TO CIVIL DIVISION~~ SUPREME COURT

8 Except as otherwise provided, a person interested in an order, sentence,
9 decree, or denial of a Probate Division of the Superior Court, who considers
10 himself or herself injured thereby, may appeal therefrom on questions of law to
11 the ~~Civil Division of the Superior Court~~ Supreme Court.

12 * * * Licensing Board Appeals * * *

13 Sec. 7. 3 V.S.A. § 130a is amended to read:

14 § 130a. APPEALS FROM BOARD DECISIONS

15 (a) A party aggrieved by a final decision of a board may, within 30 days of
16 the decision, appeal that decision by filing a notice of appeal with the director
17 who shall assign the case to an appellate officer. The review shall be
18 conducted on the basis of the record created before the board. In cases of
19 alleged irregularities in procedure before the board, not shown in the record,
20 proof on that issue may be taken by the appellate officer.

21 * * *

1 (c) A party aggrieved by a decision of the appellate officer may appeal to
2 the ~~superior court in Washington County~~ Supreme Court, which shall review
3 the matter on the basis of the records created before the board and the appellate
4 officer.

5 * * * Transportation Board Appeals * * *

6 Sec. 8. 19 V.S.A. § 5 is amended to read:

7 § 5. TRANSPORTATION BOARD; POWERS AND DUTIES

8 * * *

9 (c) The board may delegate the responsibility to hear quasi-judicial matters,
10 and other matters as it may deem appropriate, to a hearing examiner or a single
11 board member, to hear a case and make findings in accordance with 3 V.S.A.
12 ~~chapter 25 of Title 3~~, except that highway condemnation proceedings shall be
13 conducted pursuant to the provisions of chapter 5 of this title. A hearing
14 examiner or single board member so appointed shall report his or her findings
15 of fact in writing to the board. Any order resulting therefrom shall be rendered
16 only by a majority of the board. Final orders of the board issued pursuant to
17 section 20 of this title may be reviewed on the record by the superior court
18 pursuant to Rule 74 of the Vermont Rules of Civil Procedure. All other final
19 orders of the board may be reviewed on the record by the Supreme Court.

20 * * *

21

1 * * * Tax Department Appeals * * *

2 Sec. 9. 32 V.S.A. § 3116 is added to read:

3 § 3116. APPEALS FROM DECISIONS OF COMMISSIONER

4 A taxpayer or other person aggrieved by a decision of the Commissioner
5 made after a hearing conducted pursuant to 3 V.S.A. chapter 25 may within
6 30 days appeal the decision to the Supreme Court, which shall decide the
7 appeal based on the record before the Commissioner.

8 Sec. 10. 32 V.S.A. § 5404a is amended to read:

9 § 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT
10 FINANCING DISTRICTS

11 * * *

12 (j) Tax increment financing district rulemaking, oversight, and
13 enforcement.

14 * * *

15 (2) Authority to issue decisions.

16 * * *

17 (B) The Vermont Economic Progress Council shall prepare
18 recommendations for the Secretary prior to the issuance of a decision. As
19 appropriate, the Council may prepare such recommendations in consultation
20 with the Commissioner of Taxes, the Attorney General, and the State
21 Treasurer. In preparing recommendations, the Council shall provide a

1 municipality with a reasonable opportunity to submit written information in
2 support of its position. The Secretary shall review the recommendations of the
3 Council and issue a final written decision on each matter within 60 days of the
4 receipt of the recommendations. However, pursuant to subdivision (5) of this
5 subsection (j), the Secretary may permit an appeal to be taken by any party to a
6 ~~Superior~~ the Supreme Court for determination of questions of law in the same
7 manner as the Supreme Court may by rule provide for appeals before final
8 judgment from a Superior Court before issuing a final decision.

9 * * *

10 Sec. 11. 32 V.S.A. § 5408 is amended to read:

11 § 5408. PETITION FOR REDETERMINATION

12 * * *

13 (d) A municipality or the Division of Property Valuation and Review may
14 appeal from a decision of the Valuation Appeal Board to the ~~Superior Court of~~
15 ~~the county in which the municipality is located.~~ The Superior Court shall hear
16 ~~the matter de novo in the manner provided by V.R.C.P. Rule 74. An appeal~~
17 ~~from the decision of the Superior Court shall be to the~~ Supreme Court under
18 the Vermont Rules of Appellate Procedure.

19 Sec. 12. 32 V.S.A. § 5885 is amended to read:

20 § 5885. PROCEDURE FOR HEARINGS BY COMMISSIONER; APPEALS

1 (a) Any hearing granted by the Commissioner under section 5883 or 5884
2 of this title shall be subject to and governed by 3 V.S.A. chapter 25.

3 (b) ~~Any aggrieved taxpayer may, within 30 days after a determination by~~
4 ~~the Commissioner concerning a notice of deficiency, an assessment of penalty~~
5 ~~or interest, or a claim to refund, appeal that determination to the Washington~~
6 ~~Superior Court or the Superior Court of the county in which the taxpayer~~
7 ~~resides or has a place of business. [Repealed.]~~

8 Sec. 13. 32 V.S.A. § 5936 is amended to read:

9 § 5936. HEARING PROCEDURE

10 (a) If a debtor applies in writing for a hearing before a claimant agency
11 within 30 days of the date of mailing of the notice described in subsection
12 5934(c) of this chapter, the claimant agency shall conduct a hearing to
13 determine the validity and amount of debt owed by the debtor. The hearing
14 shall be held in accordance with 3 V.S.A. §§ 809 through 813.

15 (b) The final determination of any claimant agency regarding the validity
16 and amount of any debt may be appealed within 30 days to the ~~Civil Division~~
17 ~~of the Superior Court of the unit in which the taxpayer resides, except that if~~
18 ~~the claimant agency is the Office of Child Support the appeal shall be to the~~
19 ~~Family Division of the Superior Court. Upon appeal, the provisions of the~~
20 ~~Vermont Rules of Civil Procedure or the Vermont Rules for Family~~

1 ~~Proceedings, as appropriate, shall apply, and the Court shall proceed de novo~~
2 ~~to determine the debt owed~~ Supreme Court.

3 * * *

4 Sec. 14. 32 V.S.A. § 6072 is amended to read:

5 § 6072. APPEALS

6 Any person aggrieved by the denial, in whole or in part, of relief claimed
7 under this chapter, except when the denial is based upon late filing of claim for
8 relief, may appeal to the Commissioner by filing a petition of appeal within
9 60 days after the denial. This appeal shall be a person's exclusive remedy for
10 denial of a benefit claimed under this chapter. ~~The Commissioner's~~
11 ~~determination may be further appealed in the manner described in subsection~~
12 ~~5885(b) of this title.~~

13 Sec. 15. 32 V.S.A. § 7489 is amended to read:

14 § 7489. PROCEDURE FOR HEARINGS BY COMMISSIONER; APPEALS

15 (a) Any hearing granted by the Commissioner under section 7487 or 7488
16 of this title shall be subject to and governed by 3 V.S.A. chapter 25.

17 (b) ~~Any aggrieved taxpayer may, within 30 days, appeal a determination by~~
18 ~~the Commissioner concerning a notice of deficiency, an assessment of penalty~~
19 ~~or interest, or claim to refund, to the Washington Superior Court or the~~
20 ~~Superior Court of the county in which the taxpayer resides or has a place of~~
21 ~~business.~~ [Repealed.]

1 Sec. 16. 32 V.S.A. § 9617 is amended to read:

2 § 9617. NOTICES, APPEALS

3 Unless otherwise provided by this title:

4 * * *

5 ~~(e) A taxpayer may within 30 days appeal a determination by the~~
6 ~~Commissioner concerning a notice of deficiency, an assessment of penalty or~~
7 ~~interest to the Washington Superior Court or the Superior Court of the county~~
8 ~~in which the taxpayer resides or has a place of business. [Repealed.]~~

9 * * *

10 (h) At any time within three years after the date a property is transferred,
11 a taxpayer may petition the Commissioner in writing for the refund of all or
12 any part of the amount of tax paid. The Commissioner shall thereafter grant a
13 hearing subject to the provisions of 3 V.S.A chapter 25 upon the matter and
14 notify the taxpayer in writing of his or her determination concerning the refund
15 request. ~~The Commissioner's determination may be appealed as provided in~~
16 ~~subsection (e) of this section.~~ This shall be a taxpayer's exclusive remedy with
17 respect to the refund of taxes under this chapter.

18 Sec. 17. 32 V.S.A. § 10109 is amended to read:

19 § 10109. DETERMINATION BY COMMISSIONER

20 (a) Upon receipt of a notice of deficiency or assessment of penalty or
21 interest under section 10106 of this title or upon receipt of a notice of the

1 denial of all or a portion of a refund request under section 10107 of this title,
2 the taxpayer may, within 60 days after the date of mailing of the notice or
3 assessment, petition the Commissioner in writing for a determination of that
4 deficiency or assessment. The Commissioner shall thereafter grant a hearing
5 upon the matter and notify the taxpayer in writing of the Commissioner's
6 determination concerning the deficiency, assessment or refund request.

7 ~~(b) The aggrieved taxpayer may within 30 days after a determination by the~~
8 ~~Commissioner concerning a notice of deficiency, an assessment of penalty or~~
9 ~~interest, or a claim to refund, appeal that determination to the Washington~~
10 ~~Superior Court or the Superior Court of the county in which the taxpayer~~
11 ~~resides or has a place of business. [Repealed.]~~

12 Sec. 18. 32 V.S.A. § 10110 is amended to read:

13 § 10110. APPEAL PROCESS

14 (a) Any hearing granted by the Commissioner under section 10109 of this
15 title shall be subject to and governed by 3 V.S.A. chapter 25.

16 (b) Any aggrieved taxpayer may within 30 days appeal a determination by
17 the Commissioner concerning a notice of deficiency, an assessment of penalty
18 or interest, or a claim to refund, to the ~~Washington Superior Court or the~~
19 ~~Superior Court of the county in which the taxpayer resides or has a place of~~
20 ~~business~~ Supreme Court, by filing a notice of appeal and either paying or

1 giving security, approved by the Commissioner, for the payment of any tax
2 liability that may be determined to be due and costs of appeal.

3 Sec. 19. 32 V.S.A. § 10208 is amended to read:

4 § 10208. APPEALS

5 Any licensee aggrieved by an action taken under subsection 10207(c) of this
6 chapter and any person aggrieved by the Commissioner's refusal to issue or
7 renew a license under this chapter may appeal in writing to the Commissioner
8 for review of such action. The Commissioner shall thereafter grant a hearing
9 subject to the provisions of 3 V.S.A. chapter 25 upon the matter and notify the
10 aggrieved person in writing of his or her determination. The Commissioner's
11 determination may be appealed within 30 days to the ~~Washington Superior~~
12 ~~Court or the Superior Court of the county in which the taxpayer resides or has~~
13 ~~a place of business~~ Supreme Court.

14 Sec. 20. 32 V.S.A. § 10404 is amended to read:

15 § 10404. DETERMINATION OF DEFICIENCY, REFUND, PENALTY, OR

16 INTEREST

17 (a) Within 60 days after the mailing of a notice of deficiency, denial, or
18 reduction of a refund claim, or assessment of penalty or interest, a health
19 insurer may petition the Commissioner in writing for a determination of that
20 deficiency, refund, or assessment. The Commissioner shall thereafter grant a
21 hearing upon the matter and notify the health insurer in writing of his or her

1 determination concerning the deficiency, penalty, or interest. This is the
2 exclusive remedy of a health insurer with respect to these matters.

3 (b) Any hearing granted by the Commissioner under this section shall be
4 subject to and governed by 3 V.S.A. chapter 25.

5 (c) ~~Any aggrieved health insurer may, within 30 days after a determination~~
6 ~~by the Commissioner concerning a notice of deficiency, an assessment of~~
7 ~~penalty or interest, or a claim to refund, appeal that determination to the~~
8 ~~Washington Superior Court or to the Superior Court for the county in which~~
9 ~~the health insurer has a place of business. [Repealed.]~~

10 * * * Regional Venue * * *

11 Sec. 21. 4 V.S.A. § 37 is amended to read:

12 § 37. VENUE

13 (a) The venue for all actions filed in the ~~superior court~~ Superior Court,
14 whether heard in the ~~civil, criminal, family, environmental, or probate division~~
15 Civil, Criminal, Family, Environmental, or Probate Division, shall be as
16 provided in law.

17 (b) Notwithstanding any other provision of law, the ~~supreme court~~
18 Supreme Court may promulgate venue rules, subject to review by the
19 legislative committee on judicial rules under 12 V.S.A. chapter 1 ~~of Title 12~~,
20 which are consistent with the following policies:

1 (1) Proceedings involving a case shall be heard in the unit in which the
2 case was brought, subject to the following exceptions:

3 (A) when the parties have agreed otherwise;

4 (B) status conferences, minor hearings, or other nonevidentiary
5 proceedings; or

6 (C) when a change in venue is necessary to ensure access to justice
7 for the parties or required for the fair and efficient administration of justice.

8 (2) The electronic filing of cases on a statewide basis should be
9 facilitated, and the ~~court~~ Court is authorized to promulgate rules establishing
10 an electronic case-filing system.

11 (3) The use of technology to ease travel burdens on citizens and the
12 courts should be promoted. For example, venue requirements should be
13 deemed satisfied for some court proceedings when a person, including a judge,
14 makes an appearance via video technology, even if the judge is not physically
15 present in the same location as the person making the appearance.

16 (4) The Supreme Court is authorized to designate a region of no more
17 than four counties in which the venue for specified types of cases in the region
18 shall be the region as a whole irrespective of the county in which the venue
19 would lie for the case under the governing statute. A designation under this
20 subdivision shall be made by rule and shall be reviewed by the Legislative
21 Committee on Judicial Rules pursuant to 12 V.S.A. § 1.

1 *** Public Defender Co-Payments ***

2 Sec. 22. 13 V.S.A. § 5238 is amended to read:

3 § 5238. CO-PAYMENT AND REIMBURSEMENT ORDERS

4 * * *

5 (d) To the extent that the Court finds that the eligible person has income or
6 assets available to enable payment of an immediate co-payment, it shall order
7 such a co-payment to cover in whole or in part the amount of the costs of
8 representation to be borne by the eligible person. ~~When a co-payment is~~
9 ~~ordered, the assignment of counsel shall be contingent on prior payment of the~~
10 ~~co-payment.~~ The co-payment shall be paid to the clerk of the Court. Any
11 portion of the co-payment not paid to the clerk may be included in a
12 reimbursement order.

13 * * *

14 *** Post-Conviction Relief Filing Fees ***

15 Sec. 23. 32 V.S.A. § 1431a is added to read:

16 § 1431A. FEES IN SUPREME AND SUPERIOR COURTS; CIVIL ACTION
17 BY INMATE; APPLICATION TO PROCEED IN FORMA PAUPERIS

18 (a) Prepayment of filing fee and certified copies required. Notwithstanding
19 section 1431 of this title, a person confined in a state correctional facility shall
20 not bring a civil action or appeal a judgment in a civil action arising under
21 federal or state law with respect to a condition of the person's confinement or

1 the effect of an action or inaction by a government official on the life of the
2 person confined unless, in addition to the in forma pauperis application and
3 affidavit required by Rule 3.1(b) of the Vermont Rules of Civil Procedure, the
4 person submits a certified copy of his or her general account statement for the
5 6-month period immediately preceding the filing of the action or appeal,
6 obtained from the appropriate official at each facility where the person is or
7 was confined.

8 (b) Waiver of prepayment of filing fee.

9 (1) The court shall order that prepayment of the full amount of the filing
10 be waived if it finds that:

11 (A) the action or appeal is not frivolous and has been brought in good
12 faith; and

13 (B) the person is without sufficient funds to pay the filing fee.

14 (2) If the court denies the in forma pauperis application the action or
15 appeal shall be dismissed without prejudice unless the person pays the filing
16 fee to the clerk of court within 7 days after the denial.

17 (c) Full payment of filing fee required; initial partial filing fee.

18 (1) Notwithstanding subsection (b) of this section, the person shall pay
19 the full amount of the filing fee at the time the action or appeal is filed.

1 (2) The court shall assess the person’s financial status and, when funds
2 exist, collect as partial payment of the filing fee an initial partial filing fee of
3 20 percent of the greater of:

4 (A) the average monthly deposits to the general client account
5 credited to the person for the 6-month period immediately preceding the filing
6 of the action or appeal; or

7 (B) the average monthly balance in the general client account for the
8 person for the 6-month period immediately preceding the filing of the action or
9 appeal.

10 (d) Payments from account. After payment of the initial partial filing fee,
11 the person shall make monthly payments of 20% of the preceding month’s
12 deposits to the general client account credited to the person. The facility
13 having custody of the person shall forward monthly payments from the account
14 to the court clerk each time the amount in the person’s account exceeds \$10.00
15 until the filing fee is paid in full.

16 (e) Restrictions on filing fee. The filing fee collected shall not exceed the
17 amount of the fee permitted by law for the commencement or appeal of a civil
18 action. A person shall not be prohibited from bringing or appealing a civil
19 action if the court finds that the action or appeal is not frivolous and has been
20 brought in good faith, and that the person does not have the assets or means to
21 pay the initial partial filing fee.

1 (f) Payment of outstanding restitution orders. If compensatory damages are
2 awarded to a person in a civil action as the result of a condition of the person's
3 confinement of the effect of an action or inaction by a government official on
4 the life of the person confined, the amount of damages owed shall first be paid
5 to satisfy any outstanding restitution orders pending against the person,
6 whether as the result of court proceedings or facility disciplinary proceedings.
7 After full payment of all pending restitution orders, the remainder of the
8 damages award shall be forwarded to the person.

9 (g) Notification to victim. Prior to payment of compensatory damages to a
10 person in a civil action as the result of a condition of the person's confinement
11 of the effect of an action or inaction by a government official on the life of the
12 person confined, reasonable efforts shall be made to provide notice of the
13 pending damages payment to any victims of the crime for which the person
14 was confined.

15 (h) Civil liability. The Department of Corrections and its employees shall
16 not be subject to civil liability for any actions taken in compliance with this
17 section or for any failure to comply with the requirements of this section.

18 Sec. 24. EFFECTIVE DATES

19 (a) Secs. 21, 22, 23, and this section shall take effect on passage.

20 (b) Secs. 1 shall take effect on July 1, 2016.

- 1 (c) Secs. 2-20 shall take effect on July 1, 2015 and apply to appeals filed on
- 2 or after that date.